IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.6.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

W.P. Nos.6057 to 6071 of 2000
and
W.M.P. Nos.9101 to 9108 of 2000

V.Krishnamurthy ..Petitioner in W.P.No.6057 of 2000

Vs

1. The Registrar
Central Administrative Tribunal
Madras Bench
Chennai.

2. Union of India
rep. by The Chief Personnel officer
Southern Railway
Madras 600 003. ..Respondents in W.P.No.6057 of 2000

Writ Petition No.6057 of 2000 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 11.2.1999 passed by the Central Administrative Tribunal, Madras Bench in O.A.No.809 of 1996 and quash the same and directing the second respondent to fix proforma pay of the petitioner at par with Sivasubramaniam and other benefits thereto.

For petitioners : Mr.L.Chandrakumar

For respondent 2 : Mr.M.Vellaichamy

ORDER

(The Order of the Court was made by F.M.Ibrahim Kalifulla,J)

In all these Writ Petitions, the challenge is to the common orders of the Central Administrative Tribunal, dated 11.2.1999 and 9.3.1999 passed in the respective Original Applications.

2. The petitioners were all, at the relevant point of time, working as Travelling Ticket Examiners (i.e. TTEs) / Ticket Collectors (i.e. TCs). By the proceedings of the second respondent (hereinafter called as "Railways"), dated 30.7.1966, all the three categories, namely TTEs, TCs and Senior TCs were brought into two categories, namely TTEs and TCs and combined seniority list was directed to be drawn with effect from 1.1.1965 and after merger, for the purpose of seniority, the date of entry into service in the Railways was fixed as the basis, which was the subject matter of challenge in the High Court of Karnataka at Bangalore in W.P.No.516 of 1973. By order dated 15.11.1979 in that Writ Petition, it was held that there was no rational basis for counting the service rendered by the respondents 5 to 18 therein in the lower grade of TCs before their promotion to the cadre of TTE 'B' Grade for fixing seniority and the combined seniority list. It was further held that the manner in which the seniority was fixed resulted in discrimination against the petitioner in that Writ Petition as he became junior to respondents who all entered the cadre of TTE 'B' Grade long subsequent to the appointment to the said cadre. The learned Single Judge also noted the fact that the petitioner had been promoted to the cadre of TTE 'A' Grade, while respondents 5 to 18 therein had entered into TTE 'B' Grade only on the date of merger. Consequently, directions were issued by the learned single Judge to revise the seniority list, ignoring the proceedings dated 30.7.1966 which provided for the merger.

3. The above said order of the learned single Judge was also upheld by a Division Bench of Karnataka High Court in W.A.No.545 of 1980, by judgment dated 5.6.1980. However, the order of the Division Bench was not implemented and therefore, all those persons affected by the seniority list drawn based on the merger which was brought into effect on 1.1.1965, approached the Central Administrative Tribunal situated at Ernakulam, Bangalore and Madras. In one of the Original Applications preferred by one K.Raman in O.A.No.141 of 1986, the Central Administrative Tribunal, Madras Bench, by its order dated 14.11.1986, dealt with the claim of the applicant vis-a-vis one Thiru.S.Sivasubramanian, who got promoted as TTE on 29.6.1976 in the scale of Rs.425-640 and held that the said applicant's pay should be notionally fixed on 29.6.1976 in the scale of Rs.425-640 and the stage in the pay scale arrived at on that basis, should be allowed to him on 1.1.1984 when he was actually promoted. The consequential arrears and other benefits were also directed to be paid.

4. Similar such claims were made in O.A.Nos.466, 467, 469 and 470 of 1987, which were allowed by the Tribunal by order dated 22.3.1988. Subsequently, by order dated 25.7.1999 passed in O.A.No.590 of 1988, the order passed in O.A.No.466, 467, 469 and 470 of 1987 was followed and the benefit was directed to be granted to the applicant since by that time he retired from the service. The following are the observations made in O.A.No.590 of 1988:-

"The present application is also covered by the decision of this Tribunal in the above mentioned Original Applications. Accordingly, the application is allowed and the respondents are directed to fix the pay of the applicant in the scale of Rs.420-640 with effect from 29.6.1976; in the scale of Rs.500-750 with effect from 26.11.1976 and in the scale of Rs.700-900 with effect from 1.8.1979. Such fixation should be on proforma basis and the benefit of fixation should be allowed for determining the retirement and pensionary benefits of the applicant."
Similar such directions were issued by the Tribunal in certain other Original Applications.

5. Thereafter, by proceedings dated 22.9.1992, the Railways issued a common direction to the following effect:

"If there are any other claimants, irrespective of the fact that whether they have filed O.As. or not, asking the benefit of the judgment given either in O.A.NO.897/90 or 141/86, the same can be extended provided as a result of the investigation and examination, you are satisfied that it is in all fours with either of these cases. In such case the benefit of CAT/MAS decision in O.A.1014/90, 34/91 etc. indicated in this office letter of even No. dated 4.9.92 may be extended in each case from the date of their applications respectively."

6. However, when the benefits were not extended to some of the applicants whose claims were allowed by the Tribunal, series of Contempt Applications were filed in Contempt Application NO.81 of 1994, etc. batch. The said Contempt Applications were dealt with by a common order dated 11.4.1996. Relevant part of that order which is referable to the case on hand is found in paragraph No.16, which reads as under:

"16. Category-II

This category comprises the applicants who are working in Divisions other than Madurai Division. They had been promoted to the scale of Rs.150-240 on a date prior to the date of promotion of Mr.S.Sivasubramanian to this scale. Accordingly they would have been normally considered for promotion to the next higher grade of Rs.250-380/Rs.425-640 on 29.6.1976 when Mr.S.Sivasubramanian was promoted. It is not disputed that they had a higher seniority position in the integrated Seniority List for consideration for promotion to Rs.425-640. Yet they had not been promoted. The reason advanced by the respondents is that this is possibly attributable to at this distant date to non-appearance/non-selection/refusal etc. in the centralised selection. In any case, this aspect is in a way related to the grounds advanced in O.A.141 of 1986 or O.A.897 of 1990. Accordingly, these applicants cannot be granted the relief claimed. This category comprises the applicants in C.A.No.93, 103 of 1994, C.A.Nos.2,13,28,31,34,45,46,47,48 and 49 of 1995."

7. It is in the above said background, all these petitioners moved the Central Administrative Tribunal seeking for the same relief, which was granted by the Tribunal in O.A.No.141 of 1986 and the connected O.As.

8. As the facts relating to the petitioners are indisputably common, we refer to the facts relating to the date of entry into service and the subsequent dates when promotions were granted to one of the applicants, namely Thiru.V.Krishnamurthy as comparable to Thiru.S.Sivasubramanian whose case was the basis for granting the relief in O.A.No.141 of 1986. The details of service particulars, as has been submitted by the Chief Personnel Officer of the Railways himself, are as under:

S.No Grade Date of promotion

S.Krishnamurthy S.Sivasubramanian
(TRICHY) (MADURAI)

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1. 55-130 (Date of
appointment) 20.04.1948 03.07.1946

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2. 80-160(I PC)/
130-212 (II PC) 04.07.1956 30.11.1959

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3. 100-185 (I PC)/

150-240 (II PC) 03.12.1958 16.05.1968
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4. 425-640 (III PC) 31.12.1979 29.06.1976
(centralised) (centralised)
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5. 550-750 (III PC) - 26.11.1976
(centralised) (centralised)
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6. 700-900 (III PC) - 01.08.1979
(centralised)
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7. Date of retirement 31.03.1983 30.06.1985
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9. The claims of the petitioners were resisted by the respondent-Railways by filing a reply statement before the Tribunal. In the reply statement, significantly, Railways have admitted the status of the TCs or TTEs from the grade of Rs.250-380 of Second Pay Commission equated to Rs.425-640 in the Third Pay Commission, which was dealt with in a decentralised manner upto 23.8.1978. The said stand of the Railways has been spelt out in paragraph 9 of the reply affidavit, which reads as under:

"9. The Respondent submits that the promotion upto the grade of Rs.150-240 in the II Pay Commission till 31-12-72 and Rs.330-560 during the III Pay Commission (whether one belong to either Ticket Collector or Travelling Examiner cadre) was to be made based on the Divisional Seniority only. The promotion to the Grade of Rs.250-380 of II Pay Commission, equated to Rs.425-640 in III Pay Commission was made by a common selection for the entire zone by amalgamating these in Scale Rs.150-240 of II Pay Commission/Rs.330-560 in III Pay Commission till 23-8-78 based on the date of entry in the grades Rs.150-240/Rs.330-560."

10. While resisting the claim of the petitioners, the respondent-Railways has taken a stand in paragraph 17 of the reply statement to the effect that Thiru.Sivasubramanian was promoted to the grade of Rs.425-640 on 29.6.1976 itself, during which time, the applicants continued in the grade of Rs.150-240/Rs.330-560, which could be possibly attributable to the non-appearance/non-selection, refusal etc. in the centralised selection which might have resulted in Thiru.Sivasubramanian superseding the applicant. It was then stated that the promotion of the applicant to the scale of Rs.425-640 was much later than the date of promotion of Thiru.Sivasubramanian. The said stand was taken by the respondent-Railways by stating that at that distant point of time, that could be the possible reason which the Railways was in a position to take in the applications preferred before the Tribunal.

11. By the impugned order, the Central Administrative Tribunal, by merely referring to its earlier order dated 11.4.1996 passed in Contempt Application No.81 of 1994, etc batch, rejected all the applications, by holding that the reasons stated in the order passed in the Contempt Applications would hold good for rejecting the applications. Aggrieved by the same, the petitioners have come forward with these Writ Petitions.

12. By referring to the earlier orders of the Tribunal in O.A.No.141 of 1986, dated 14.11.1986 and the subsequent orders in similar such Original Applications, learned counsel for the petitioners contended that whatever reasoning which weighed with the Tribunal for granting the relief in the earlier Original Applications, was equally applicable to the case of the petitioners and therefore, the Tribunal ought to have granted the very same relief as has been granted by the Tribunal in the

earlier cases. Learned counsel for the petitioners also contended that the Railways, having issued the proceedings dated 22.9.1992 to extend the benefit granted in O.A.No.141 of 1986 to all similarly placed persons, the rejection of the petitioners' claim by the Railways was not justified. Learned counsel further contended that the Tribunal's order in Contempt Applications ought not to have been the basis for rejecting the petitioners' application and that the Tribunal ought to have independently applied its mind before passing the order impugned in the Writ Petitions.

13. Learned Standing Counsel for the Railways, on the other hand, sought to distinguish the order passed in O.A.No.141 of 1986 by contending that the applicant in that Original Application as well as in the other Original Applications, which came to be ordered, by following O.A.No.141 of 1986, were all cases where the respective applicants worked in Madurai Division, to which Division Thiru.Sivasubramanian also belonged and therefore, the relief granted in O.A.No.141 of 1986 could not have been applied to the case of the petitioners. According to the learned Standing Counsel, the post of TTEs from the grade Rs.150-240 = Rs.330-560 to the grade of Rs.250-380 = Rs.425-640, got decentralised with effect from 23.8.1978 and that there was no scope to compare the case of the petitioners on par with Thiru.Sivasubramanian, as the petitioners were all working in different Divisions other than Madurai Division to which Thiru.Sivasubramanian belonged. Learned Standing Counsel also contended that if the petitioners got their promotions to the grade Rs.425-640 long after the date, namely 29.6.1976, the date on which Thiru.Sivasubramanian got promoted to that scale, the petitioners were not entitled to claim stepping up of their pay on the ground that such a higher scale was given to their junior.

14. Having heard learned counsel for the petitioners as well as learned Standing Counsel for the respondent-Railways, we are not in a position to accept the stand of the respondent-Railways.

15. Certain undisputed facts which are required to be stated are that there were two seniority lists drawn in respect of the persons working in the grade of TTEs/TCs. The first one was drawn based on the merger proceedings dated 30.7.1966. As per the said proceedings, the date of merger was held to be 1.1.1965. For the purpose of determining the seniority, the date of entry into the service of the Railways was stated to be the basis. After the order of the learned single Judge, dated 15.11.1979 in W.P.No.516 of 1973 of the Karnataka High Court, which was also confirmed by the Division Bench in W.A.No.545 of 1980, dated 5.6.1980, the respondent-Railways had to necessarily modify the seniority list. As per the modified seniority list, the basis for reckoning the seniority was the date of entry into the cadre of TTEs/TCs. in the starting scale, namely Rs.150-240 = Rs.330-560. The promotion upto the grade of Rs.150-240 = Rs.330-560 was made based on the Divisional seniority only. However, the promotion to the grade of Rs.250-380 = Rs.425-640 was made by a common selection by amalgamating those in the scale of Rs.150-240 = Rs.330-560. Such amalgamated common selection was made till 23.8.1978. The basis for making the said selection was based on the date of entry of the concerned employee in the grade Rs.150-240 = Rs.330-560. Therefore, the claims of the petitioners will have to be analysed in the above background. Since the Karnataka High Court set aside the order of merger of the post as directed in the proceedings dated 30.7.1966, as from 1.1.1965, whereby the date of entry into the service of the Railways was set at naught and after the order of the High Court of Karnataka, when the revised seniority list was drawn, the rights of the parties have to be necessarily worked out based on the revised seniority list which was drawn based on the order of the Karnataka High Court.

16. In the above context, when we refer to the order of the Central Administrative Tribunal, dated 14.11.1986 passed in O.A.No.141 of 1986, we find that such a revised seniority list was drawn and published on 20.5.1982. Since upto 23.8.1978, there was a centralised selection from the grade Rs.150-240 = Rs.350-560 to Rs.250-380 = Rs.425-640, it will have to be necessarily held that any revised seniority list ought to have been made providing for the seniority of all persons in that

respective grades on a centralised basis.

17. Admittedly, in the grade Rs.150-240 = Rs.330-560, the petitioners were all seniors to Thiru.S.Sivasubramanian, even though he belonged to Madurai Division, while the petitioners belonged to different other Divisions. Therefore, it can be safely held that the petitioners were all seniors for being considered for promotion to the next higher grade of Rs.250-380 = Rs.425-640 based on a common selection for the entire zone. But for the erroneous merger ordered with effect from 1.1.1965, the seniority of the petitioners in the grade Rs.150-240 = Rs.330-560, would have enured to their benefit, by which, as in the case of the applicant in O.A.No.141 of 1986, the petitioners would have definitely got their positions above Thiru.S.Sivasubramanian. Therefore, when the seniority list was re-drawn after the order of the Karnataka High Court, the status of the petitioners in the seniority list ought to have been revised as was prevailing prior to 23.8.1978.

18. As far as the contention of the respondent-Railways as raised in their reply statement before the Tribunal, based on the circumstances under which the petitioners continued to remain in the grade of Rs.150-240 = Rs.330-560, while Thiru.Sivasubramanian got promoted to the scale of Rs.250-380 = Rs.425-640 earlier to the petitioners, by stating that, that might have been due to the non-appearance/non-selection, refusal etc., of the petitioners at the relevant point of time, we wish to refer to one of the orders of the Tribunal, wherein, the very same contention was squarely met in the order passed in O.A.No.466 of 1987 etc. batch, dated 22.3.1988. It will be worthwhile to refer to the reasoning of the Tribunal itself as stated in the said order, which is to the following effect:

"The respondents have stated that these applicants had not been selected for the 425-640 grade on 11.7.1975. The counsel for the respondents has not produced any file before us as to why they were not selected. The non-selection could be as a result of non-passing of the test or it could be due to their lower seniority. It is however seen from a communication dated 2-7-75 giving a list of staff who are to be considered for promotion to the next higher grade, Sivasubramaniam is shown at Sl.No.32 whereas the applicant in O.A.466/87 is shown at Sl.No.53, the applicant in O.A.467/87 at Sl.No.55, the applicant in O.A.469/87 at Sl.No.61 and the applicant in O.A.470/87 should have been further lower in the list. As has been pointed out by the learned counsel for the applicants, for each vacancy four employees are considered for selection. On 11.7.75 when there had been 78 employees who had been called, the juniors could not have been selected even if they had passed the test. We are of the view that in the absence of either the relevant records, or even an averment to the effect that the applicant had not passed the selection test held on 11.7.75, they missed the selection only on the ground that they were shown very much junior to the said Sivasubramanian who had not selected in that test ..."

19. Even in the present case, though the respondent-Railways took an identical stand, hereagain, no records were produced to state as to what really was the reason which resulted in the non-selection of the petitioners to the promoted scale of Rs.425-640 as against Mr.Sivasubramanian. Therefore, the ground stated by the respondent-Railways, namely non-appearance/non-selection, refusal etc. cannot be accepted without there being any acceptable material in support of the said stand.

20. The rejection of the said similar stand in O.A.No.466 of 1987, etc. batch, by the Tribunal had become final and conclusive. In such circumstances, different treatment cannot be meted out to the petitioners on the sole ground that they belong to different Division than the Division to which Thiru.Sivasubramanian belong. At the risk of repetition, it will have to be stated that prior to 23.8.1978, when promotion to the scale Rs.250-380 = Rs.425-640 was on a centralised basis, namely by way of common selection from those who were in the scale Rs.150-240 = Rs.330-560 and when Thiru.Sivasubramanian, who was far junior to the petitioners, was promoted to the higher scale prior to the decentralisation of the said post on and from 23.8.1978, it will have to be held that whatever

position that prevailed for determining the seniority of the petitioner in O.A.No.141 of 1986 vis-a-vis Thiru.S.Sivasubramanian irrespective of the fact that both belong to Madurai Division, should mutatis-mutandis apply even to others as well, including the petitioners who were working in other Divisions. Therefore, we are convinced that whatever relief that was granted in favour of the petitioner in O.A.No.141 of 1986 should be extended to the petitioners as well.

21. As far as the contention based on the order of the Tribunal in Contempt Application No.81 of 1994 etc. batch, dated 11.4.1996, we are not in a position to apply the conclusion of the Tribunal in that order. To appreciate the said contention, the conclusion of the Tribunal in that order as stated in paragraph 16 of the order, has been extracted in the earlier paragraph. The Tribunal, after recording the facts relevant to the position held by the concerned applicants vis-a-vis Thiru.S.Sivasubramanian, has in one sentence stated that the relief granted in O.A.No.141 of 1986 or O.A.No.897 of 1990, cannot be granted to those categories of persons. With great respect, we are constrained to state that the Tribunal failed to analyse the claims of the petitioners vis-a-vis Thiru.S.Sivasubramanian before reaching the said conclusion. As has been pointed out by us in the earlier paragraph, on a comparable consideration of the status of the applicant in O.A.No.141 of 1986 and the petitioners herein, we are able to state that they were all standing on the same position and the relief granted to the applicant in O.A.No.141 of 1986 is bound to be extended to the petitioners also. We are not therefore in a position to apply the conclusion of the Tribunal in its order dated 11.4.1996 in Contempt Application No.81 of 1994, etc. batch.

22. In the present Original Applications preferred by the petitioners, the relief sought for is for setting aside the order of the Chief Personnel Officer of the respondent-Railways dated 4.4.1996 with a further direction to the respondent-Railways to re-fix the applicants' pay on a proforma basis in the scale of pay of Rs.425-640 with effect from 29.6.1976, in the scale of Rs.550-750 with effect from 26.11.1976 and in the scale of Rs.700-900 with effect from 1.8.1979 on par with Thiru.Sivasubramanain as per the Railway Board letter dated 15/17.9.1964 and revise the applicants' pension and other retirement benefits on that basis with all consequential benefits including commutation of pension and arrears thereof. The petitioners have not asked for any direction for payment of arrears in the difference in salary payable based on the benefit derived by Thiru.S.Sivasubramanian. In fact, in O.A.No.590 of 1988, the earlier orders of the Tribunal in O.A.No.141 of 1986 and O.A.Nos.466 of 1987 etc., was followed, as indicated in the earlier paragraph of this order.

23. Having regard to our conclusion that the petitioners are also entitled for the very same relief, while setting aside the orders dated 11.2.1999 and 9.3.1999 impugned in these Writ Petitions, the Original Applications shall stand allowed and the respondent-Railways is directed to fix the pay of the petitioners in the scale of Rs.425-640 with effect from 29.6.1976, in the scale of Rs.550-750 with effect from 26.11.1976 and in the scale of Rs.700-900 with effect from 1.8.197 and such fixation should be on proforma basis and the benefit of such fixation should be allowed for determining the retirement and pensionary benefits of the petitioners. The respondent-Railways is directed to comply with the above directions within three months from the date of receipt of a copy of this order. We make it clear that there is no direction for payment of arrears of difference in the salary.

24. The Writ Petitions are allowed to the extent indicated above. No costs. W.M.Ps. are closed.

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[PRV/10688]